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8                   UNITED STATES DISTRICT COURT  
9                   WESTERN DISTRICT OF WASHINGTON  
10                  AT TACOMA

11 ROBERT DEAN HEAGY,

12                   Plaintiff,

13                  v.

14 KITSAP COUNTY et al.,

15                   Defendants.

16                   No. 09-5091RBL/JRC

17                   REPORT AND RECOMMENDATION

18                   **NOTED FOR:**  
19                   **October 2, 2009**

20                  This 42 U.S.C. §1983 Civil Rights matter has been referred to the undersigned Magistrate  
21 Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrate Judges'  
22 Rules MJR 1, MJR 3, and MJR 4. Before the Court is defendant's motion for judgment on the  
23 pleadings (Dkt # 19). The motion was filed July 22, 2009, and noted for August 14, 2009. The  
24 time for filing a response has passed and the matter is ready for consideration.

25                  Significantly, plaintiff failed to file any objection to defendant's motion. Local Rule 7  
26 (b)(2) provides that failure to oppose a motion may be considered by the court as an admission  
the motion has merit.

REPORT AND RECOMMENDATION- 1

## FACTS

Plaintiff alleges that on October 19, 2003, he was assaulted in the Kitsap County Jail by a police officer or deputy sheriff named Daniels. He alleges physical injury and depression as a result of the attack. This action was filed February 18, 2009.

All defendants move for dismissal and raise the statute of limitations as a defense. The statute of limitations is an affirmative defense that must be raised by the defendants.

## **STANDARD OF REVIEW**

Under Fed. R. Civ. P. 12 (c), a motion for judgment on the pleadings may be brought “(a)fter the pleadings are closed – but early enough not to delay trial . . . .” Judgment on the pleadings is proper when “the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law.” Hal Roach Studios, Inc. v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir.1990).

## DISCUSSION

42 U.S.C. § 1983, the Civil Rights Act, contains no statute of limitations. The court will use the statute of limitations from the state cause of action that is most like the alleged incident. Usually, this is a state's personal injury statute. In Washington, a plaintiff has three years to file a personal injury claim. Rose v. Rinaldi, 654 F.2d 546 (9th Cir 1981). Therefore, the court will use three years as the applicable statute of limitations. *Id.*

This action was filed February 18, 2009. Therefore, any claim involving an incident prior to February 18, 2006 is time barred. Plaintiff's allegations involve an incident that occurred October 19, 2003 (Dkt. # 19, page 2). Therefore, it is the opinion of this court that the action is time barred and the court recommends that the action be **DISMISSED WITH PREJUDICE**.

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2                   CONCLUSION

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4 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure,  
5 the parties shall have ten (10) days from service of this Report to file written objections. *See*  
6 *also*, Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for  
7 purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit  
8 imposed by Rule 72(b), the clerk is directed to set the matter for consideration on October 2,  
9 2009, as noted in the caption.

10 DATED this 2<sup>nd</sup> day of September, 2009.

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13                   J. Richard Creatura  
14                   United States Magistrate Judge